

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
PUBLIC UTILITIES COMMISSION)
)
Instituting a Proceeding on)
Electric Competition, Including an)
Investigation of the Electric)
Utility Infrastructure in the State)
of Hawaii)
_____)

DOCKET NO. 96-0493

DECISION AND ORDER NO. 20584

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DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
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Commission, State of Hawaii.

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OF THE STATE OF HAWAII

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DECISION AND ORDER

I.

Purpose of Investigation

On December 30, 1996, the commission instituted this proceeding through Order No. 15285 to examine the issues related to the introduction of competition in the electric utility industry including the potential impacts of competition, the feasibility of various options, and the appropriate extent to which competition should be encouraged for the overall benefit of all consumers. The commission's foremost concern, however, was to ensure the long-term efficiency and reliability of the State's energy systems and the availability of safe, affordable, and equitable electricity services to Hawaii's citizens.

II.

Background

In this docket, the commission enumerated the following preliminary issues: (1) feasible forms of competition: wholesale

versus retail; (2) the regulatory compact; (3) identification of State's needs, policies, and objectives that may be supported by competition in the electric utility industry; (4) public interest benefits; (5) long-term integrated resource planning; (6) renewable resources; (7) delineation of the physical facilities needed to support competition; (8) structural changes needed to support competition; (9) appropriate treatment of potential stranded costs; (10) meaningful customer choice; (11) identification of moral, cultural, and ethical values; and (12) identification of the objectives and the establishment of a time frame for the introduction of competition in the electric utility industry.

By Order No. 15285, the commission made Hawaiian Electric Company, Inc., Maui Electric Company, Limited, and Hawaii Electric Light Company, Inc. (collectively referred to as "HECO"), the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"), and Kauai Electric, Division of Citizens Utilities Company (nka, Kauai Island Utility Company) ("Kauai Electric") parties to this docket.

By Order No. 15371, filed on February 20, 1997, Waimana Enterprises, Inc., United States Department of Defense through the Department of the Navy, Department of Business, Economic Development, and Tourism, State of Hawaii, GTE Hawaiian Telephone Company, Incorporated (nka, Verizon Hawaii Inc.) ("GTE Hawaii"), Hawaii Renewable Energy Alliance, Puna Geothermal Venture, Life of the Land, International Brotherhood of

Electrical Workers, Local 1260, the County of Maui, the County of Kauai, the County of Hawaii, and AES Hawaii (fka, AES Barbers Point, Inc.) were allowed to intervene into this proceeding. Enserch Development Corporation was granted participant status. The Association for Competition in Electricity was granted partial participant status in the formulation of the issues of this proceeding. Inter Island Solar Supply's motion to intervene was denied, but was encouraged to participate through Hawaii Renewable Energy Alliance, of which it is a member.

Order No. 15371 also required the parties and participants to file initial submissions on the issues to be explored in this docket. The commission stated that the outline of issues contained in Order No. 15285 should serve as the starting point. The commission also instructed the parties and participants to focus on what the commission considered to be the four cornerstones upon which competition in Hawaii's electric utility infrastructure will be built: (1) consumer demands, needs, protection, and education; (2) services that will benefit the State of Hawaii; (3) necessary physical facilities, organizational structures, and operational conditions; and (4) the appropriate regulatory framework.

Following the parties' and participants' initial submissions on the issues, the commission initiated discussion sessions designed to seek consensus with respect to the issues in this docket. From May 28-30, 1997, the commission held three discussion sessions. Six nationally recognized industry

professionals¹ moderated the discussion sessions and their aim was to provide the participants with an understanding of the issues, broad and specific, that need to be addressed in the transition to a more competitive industry marketplace in Hawaii.

By letter dated July 25, 1997, the commission informed the parties that the commission had asked the Center for Alternate Dispute Resolution² ("CADR") to help the parties reach consensus on the issues to be addressed in this docket ("Collaborative Process"). The first meeting of the Collaborative Group ("participants of the Collaborative Process") was held on August 28, 1997. The Collaborative Group was presented with the results of a survey taken by CADR, developed a mission statement, appointed a working group to further refine that mission, adopted ground rules, and generated an expanded and prioritized list of areas for group discussion.

On September 30, 1997 and October 1, 1997, the Collaborative Group met again. On the first day, the revised mission statement was adopted, additional group rules were discussed, and a list of possible types of competition was

¹Scott Hempling, Attorney at Law, Washington, D.C.; Robert W. Gee, Commissioner, Texas Public Utilities Commission, Austin, Texas; Susan Tomasky, General Counsel, Federal Energy Regulatory Commission, Washington, D.C.; John Jurewitz, Manager - Regulatory Policy, Southern California Edison Company, Rosemead California; Gene Peters, Senior Manager of Policy, Electric Power Supply Association, Washington, D.C.; Michael Shames, Executive Director, Utility Consumers' Action Network, San Diego, California.

²The Center for Alternate Dispute Resolution is a State Judiciary program established to mediate disputes involving local government agencies and has considerable expertise in resolving issues affecting the public interest.

generated. On the second day, the Collaborative Group broke into small groups to discuss ways of clustering areas of potential discussion and prospective near term issues and then drafted a list of anticipated information items that would be needed for more thorough Collaborative Group discussions. Finally, the Collaborative Group generated two rough discussion scenarios, one near term, one far term, to help think through the kinds of competition that might be potentially relevant in Hawaii.

On October 23, 1997, the Collaborative Group met once again, listened to presentations on competitive bidding, and discussed various potential criteria for gauging the conditions of less and more effective competition. The Collaborative Group agreed to explore the area of retail wheeling³ at a later date. After an exploratory discussion aimed at separating those issues which might need, or not need, to be litigated through evidentiary proceedings, the participants agreed to request the commission's assistance in further clarifying the docket by issuing a proposed order and schedule.

On November 13, 1997, the Collaborative Group met and edited a portion of the proposed order and schedule. A presentation and discussion also occurred. A working group consisting of the Consumer Advocate and HECO discussed other changes to the order during the interim period.

On December 9, 1997, the Collaborative Group met and discussed the proposed order. A revised order was to be

³The term "wheeling" is used to describe the situation when a utility transmits power for others and is neither the generator nor purchaser of that power. Order No. 15285 at 6 n.4.

circulated to the members of the Collaborative Group for review and approval. The Collaborative Group set a deadline of January 15, 1998 to transmit the Proposed Stipulated Prehearing Order to the commission. The Proposed Stipulated Prehearing Order included three Collaborative Process meetings in the proposed schedule. The retail wheeling presentation did not occur, but HECO made presentations on performance based ratemaking and reliability issues that may arise in a competitive environment.

On January 16, 1998, HECO filed a Proposed Stipulated Prehearing Order signed by a majority of the parties and participants, including Kauai Electric, AES Hawaii, the Association for Competition in Electricity, the Consumer Advocate, HECO, Enserch Development Corporation, the Department of Defense, GTE Hawaii, International Brotherhood of Electrical Workers, Local 1260, and Puna Geothermal Venture.

The remaining parties, Hawaii Renewable Energy Alliance, the Counties of Hawaii, Kauai, and Maui, the Department of Business, Economic Development and Tourism, Life of the Land, and Waimana Enterprises, Inc. did not sign the Proposed Stipulated Prehearing Order.

By letter dated January 27, 1998, the commission informed ADRC that it shared the same concerns of the parties who withheld signing the Proposed Stipulated Prehearing Order, particularly the length of the proposed schedule of proceedings set forth in the Proposed Stipulated Prehearing Order. Among other concerns, the commission believed the proposed

two-year schedule of proceedings would create hardship for the smaller parties who have limited financial resources. The commission also had concerns that it may also preclude other small businesses and community groups from intervening in the docket. Accordingly, the commission recommended that the parties shorten the proposed timetable to conclude the next phase (the contested hearing phase) by December 1998.

The Collaborative Group met on March 2, 1998 and adopted a new Collaborative Process and schedule. Position papers were to be submitted by June 5, 1998. Presentations by the parties were to be held on June 29, 1998, June 30, 1998, and July 1, 1998. Written comments on position papers were due on July 31, 1998. Position papers were to be finalized by September 18, 1998. A draft collaborative report was to be transmitted to all collaborative members for comments on October 16, 1998. Comments on the draft collaborative report were submitted to the working group on November 6, 1998. The final collaborative report was to be submitted to the commission on November 30, 1998. By letter dated September 10, 1998, the Consumer Advocate and KE confirmed the parties' agreement to extend the filing date for the submission of final statements of position from September 18, 1998 to October 16, 1998.

On October 19, 1998, the Collaborative Group filed its Final Collaborative Report which includes executive summaries of respective members' positions, and Final Statements of Positions from the following: (1) Consumer Advocate; (2) Counties of Kauai

and Maui (County of Hawaii filed a joinder); (3) Department of Business, Economic Development and Tourism; (4) Department of Defense; (5) Enserch Development Corporation; (6) Verizon Hawaii Inc.; (7) HECO; (8) Hawaii Renewable Energy Alliance; (9) International Brotherhood of Electrical Workers, Local 1260; (10) Kauai Electric; (11) Puna Geothermal Venture; and (12) Waimana Enterprises, Inc. On October 20, 1998, Life of the Land filed its Final Position Statement.

III.

Summary Of Findings⁴

The Collaborative Process did not result in the parties reaching consensus on any significant issue raised in this docket. The diverse positions of the parties' conclusions and recommendations made it difficult for the commission to conclude whether a competitive electric power industry would be beneficial to the State's consumers. The range of options ranged from retail competition and divestiture to alternative forms of regulations like performance-based ratemaking. Many of the recommendations required statutory changes and many other recommendations lacked specifics on how to move from the current

⁴In this decision and order, we take administrative or official notice of facts set forth in reports and other documents filed in or prepared by other federal and state agencies and energy-related research organizations (i.e., Department of Energy and Oregon Public Utilities Commission).

regulatory structure to their recommended form of competition. Many of the recommendations did not have a meaningful discussion of the associated costs of implementing competition. Given the lack of consensus of the parties, the commission will take a cautious approach to restructuring and, at this juncture, elects to monitor restructuring activities in other states and at the federal level before proceeding with any major restructuring in Hawaii.

Since 1996, approximately 24 states and the District of Columbia have either enacted enabling legislation or issued regulatory orders implementing retail access.⁵ The primary rationales for these initiatives have been that competition will tend to reduce prices relative to those that have existed under regulation and that competition will give consumers greater choice. Recently, several states discovered that competition is not materializing exactly as predicted, and many states are now reassessing the environment and the future of electric restructuring. While some have chosen to reinforce efforts to develop a competitive retail electric market, others have opted to return to previous regulatory frameworks.

⁵"Retail access" generally means allowing customers to choose their own supplier of generation energy services. Information discussed herein is derived primarily from research materials obtained from the Energy Information Administration ("EIA") website of the U.S. Department of Energy. EIA, "Status of State Electric Industry Restructuring Activity as of February 2003," website at <http://www.eia.doe.gov/cneaf/electricity/chg-str/regmap.html>. See also, Potter, Scott, After the Freeze: Issues Facing Some State Regulators as Electric Restructuring Transition Periods Ends. (Columbus, OH: NRRI, September 2003).

A.

California Experience⁶

After the passage of restructuring legislation in 1996, California experienced an energy crisis. California experienced supply shortages at both the state and regional levels, and other factors, which led to rapid increases in prices, brownouts, and the near bankruptcy of the state's largest utilities. The customers of the utility serving San Diego, who were the first to experience market prices, saw their electric bills nearly triple from summer 1999 to summer 2000. The legislature subsequently capped the utility's rates for residential and small business customers.

Two other major utilities, which were still subject to price regulation at the retail level, experienced huge losses as wholesale prices rose substantially. The utilities' credit ratings dropped to junk bond status as debts mounted. Wholesale suppliers became unwilling to sell on the California market. There were blackouts in early June 2000 and brownouts were occurring almost daily in January 2001. There were also allegations that wholesale suppliers were using their market power to increase prices. State officials petitioned the Federal Energy Regulatory Commission ("FERC") to impose price caps. FERC subsequently issued orders changing wholesale market rules and requiring wholesalers to provide refunds under certain circumstances.

⁶Id.

In February 2001, the legislature passed a bill authorizing the state's Department of Water Resources to buy power under long-term contracts and sell it to consumers. The legislation authorized the department to sell \$10 billion in revenue bonds to pay for the purchase and the governor established an \$800 million conservation program by executive order.

The following month the governor issued a series of executive orders to facilitate the construction of new power plants. Also in March, the governor announced a plan to have the state rescue the utilities by purchasing their transmission systems. He reached an agreement with Southern California Edison to do so. In exchange, the company's corporate parent agreed to provide it with \$420 million and to sell electricity from the company's plants at cost-based rates for the next ten years. In June 2001, the legislature established a new state authority authorized to direct new energy conservation and renewable energy programs and to issue up to \$5 billion in bonds.

During the same period, the California Public Utilities Commission issued a series of orders fundamentally changing the market rules for the utilities. It allowed the utilities to enter into long-term contracts in late 2000. In January 2001, it suspended penalties for interruptible customers who fail to curtail consumption under emergency circumstances. It also increased rates up to 80 per cent, depending on consumption and income. It increased rates for commercial customers by 35 per cent and 45 per cent and for industrial customers by an

average of 50 per cent. After a series of additional energy crises, the California Public Utilities Commission suspended competition on September 20, 2001. In October 2001, the California Public Utilities Commission suspended retail choice, although it allowed existing contracts to run until their expiration. At that time, about 5 per cent of the utilities' peak load had chosen competitive suppliers. Most of these contracts were with large industrial customers.

B.

Restructuring Experience In Other States⁷

Nearly half of the remaining states are experimenting with some form of retail competition for electricity service. Of those, the District of Columbia and 17 states let residential customers choose among competing power suppliers: Arizona, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Michigan, Montana, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas and Virginia. Three other states, Arkansas, Montana and New Mexico, have set dates for residential direct access.

In most states where residential consumers can choose an alternate supplier, only a small percentage does so. Statewide participation varies from less than 1 per cent to 19 per cent. In general, states with the highest participation

⁷The information described herein is derived primarily from the Oregon Public Utilities Commission's report entitled, "Evaluation of a Competitive Power Market for Residential Consumers - Report to the 72nd Legislative Assembly," December 2002.

allow "opt-out aggregation," where jurisdictions put all residential consumers into a single buying group. Only households that tell the jurisdiction they do not want to be part of the group are excluded. One supplier - the lowest bidder in an auction for electricity services - serves everyone in the buying group.

Residential electric rates have declined in states with competitive power markets. However, that largely is the result of mandating rate reductions for regulated utilities and requiring competing offers to be lower during the transition to competitive markets. Typical monthly savings for residential customers choosing an alternative electricity supplier have been small, from 2 per cent to 10 per cent of their generation portion of the bill.

A recent analysis of competitive energy markets in five states found that residential consumers are likely to be worse off with any price plan that exposes them to short-term volatile rates in an immature market⁸. The study also found that none of states has sustained a robust market for energy services aimed at residential customers. Marketers' offers and customer participation declined steadily over time.

In addition, no state has tested policies for long-term default rate for consumers who do not have access to a competitive supplier, are dropped by a supplier, or choose not to

⁸Id. (citing Barbara R. Alexander, "An Analysis of Residential Energy Markets in Georgia, Massachusetts, Ohio, New York and Texas," The Transition to Retail Competition in Energy Markets: How Have Residential Consumers Fared?, National Center for Appropriate Technology, September 2002.)

switch from utility service. This is an important issue for residential consumers, particularly low-income households.

IV.

Decision

Electric industry restructuring should only be initiated if it is in the public interest. Developments in other states indicate that, at best, implementation of retail access would be premature. In addition, projections of any potential benefits of restructuring Hawaii's electric industry are too speculative and it has not been sufficiently demonstrated that all consumers in Hawaii would continue to receive adequate, safe, reliable, and efficient energy services at fair and reasonable prices under a restructured market, at this time. Accordingly, the commission does not find it is in the public interest to completely restructure the electric industry at this time. We will continue, however, to keep a watchful eye on restructuring experiences in other states. In the alternative, the commission finds that it is in the public interest to work within the current regulatory scheme to strive to improve efficiency within the electric industry⁹.

Accordingly, the commission will open two smaller and more focused investigative dockets to move toward a more competitive electric industry environment under cost-based

⁹Hawaii is different from other states because, without interconnection to other states' energy transmission grid, Hawaii does not need to respond to the actions of its neighbors, and Hawaii does not have the advantages and disadvantages associated with being connected with other states.

regulation. The commission will immediately open the following dockets:

- (1) An Investigation of Distributed Generation in Hawaii; and
- (2) An Investigation of Competitive Bidding for New Generating Capacity in Hawaii.

The objective of the "distributed generation" proceeding is to, among other things, examine and develop policies and a framework for distributed generation projects deployed in Hawaii. Issues that the commission intends to explore include, without limitation, identifying what impacts, if any, distributed generation will have on Hawaii's electric generation market and distribution system, and defining the role of the commission in overseeing the deployment of distributed generation throughout the different electric utility service territories.

The objective of the "competitive bidding" proceeding is to evaluate competitive bidding as a mechanism for acquiring or bidding new generating capacity in Hawaii. These issues include, without limitation, evaluating the benefits and impacts of competitive bidding and developing policies, guidelines and requirements for a fair, competitive bidding system for new generation, if necessary, to serve the various businesses and consumers throughout the State.

As we continue to consider the above-referenced issues separately, we must also remain cognizant of the cumulative nature and effect of our decisions to other dockets.

We recognize that the commission's ultimate decision on certain issues of one docket may necessitate adjustment(s) to issues of other dockets.


V.

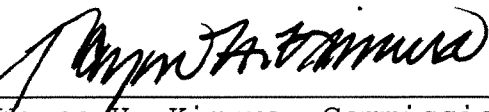
THE COMMISSION ORDERS:

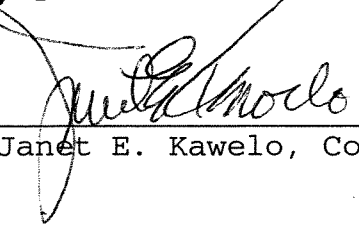
1. No action will be taken on implementation of retail electric competition for Hawaii at this time.
2. This docket is closed.

DONE at Honolulu, Hawaii this 21st day of October, 2003.

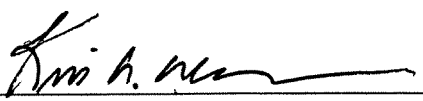
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By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


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96-0493.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20584 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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